

Olson v. Le Mars Mutual Insurance Co., 269 Neb. 800 (May 13, 2005).

Plaintiff Norris Olson owned a grain storage building that was damaged by hail; the cost to repair the damage was estimated to be \$95,040. Immediately before the damage, the building had a market value of approximately \$200,000. After the damage occurred, Olson sold the building for \$100,000. Le Mars Mutual Insurance Co. had issued an insurance policy to cover the building. The policy stated that when Le Mars had the duty to indemnify Olson, Le Mars could choose between the lesser of actual cash value (ACV) of the building and the ACV cost to repair/replace the damaged property.

Le Mars elected to pay the cost to repair the damage. However, Le Mars adjusted the damage claim for depreciation. The building was approximately 40 years old, and estimated to have an expected useful life of 100 years. Olson rejected the offer of \$57,365.60 (\$95,040 damage, 40% depreciation, \$500 deductible) and filed a claim against the insurer for the full \$94,540 (\$95,040 damage, \$500 deductible).

The issue in this case stems from the use of “ACV”. The Nebraska Supreme Court agreed that use of “ACV” would enable the insurer to deduct depreciation on the occasions it chose to indemnify for a full loss rather than for repair costs. However, the Court rejected the notion that, on the occasions the insurer elects to repair rather than replace, the insured would receive a windfall absent depreciation, stating “[r]ecovery of the full repair costs without a depreciation deduction [would] restore the value of the insured property that existed immediately prior to the loss, but will not enhance that value.” The Court then concluded that, unless the policy specifically allowed for depreciation, “an insurer may not deduct depreciation from the cost of repairing partial damage to insured property where the ACV of the property, as repaired, does not exceed its ACV at the time of the loss.”

The Court then reversed the trial court, which had adjusted the award up to \$99,500 (to reflect the loss of fair market value to the building less the \$500 deductible), and reduced the award to \$94,540. “Le Mars’ liability under its policy is limited to the repair cost of \$95,040 less the insured’s \$500 deductible.”